THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 17546 of 2004

O r d e r:

Assailing the award dated 19.04.2004, passed by the Labour Court-Visakhapatnam, in I.D. No. 7 of 2002, published in G.O. Rt. No. 1093, dated 13.07.2004, the petitioner filed the present writ petition.

The petitioner was appointed as Conductor in the 1st respondent-APSRTC on 20.01.1996. On 06.03.2001, while the petitioner was conducting the bus on the route Kakinada – Vakapalli, a check was exercised, and the checking officials having found certain cash and ticket irregularities, issued charge memo to the petitioner. The petitioner submitted his explanation to the charge memo. Dissatisfied with the explanation, the respondents placed the petitioner under suspension, and a charge sheet was issued. The Enquiry Officer, who conducted enquiry into the charges leveled against the petitioner, submitted report holding that the charges are proved. Based on the enquiry report, the 1st respondent, namely the Depot Manager, vide proceedings dated 24.08.2001 issued notice to the petitioner, calling upon him to show cause as to why he should not be removed from service. The petitioner submitted his explanation thereto on 04.09.2001. However, vide proceedings dated 07.09.2001, the 1st respondent removed the petitioner from service. Assailing the order of removal, the petitioner raised an industrial dispute in I.D. No. 7 of 2002 before the Labour Court, which by award dated 19.04.2004, published in G.O. Rt. No. 1093, dated 13.07.2004, dismissed the same, upholding the orders of the disciplinary authority. Assailing the said award and notification, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the petitioner did not commit any cash and ticket irregularities, and since the bus was overloaded, by mistake the petitioner could not issue the ticket to a passenger. He further submits that relying on the words of the Porter, the petitioner issued the ticket for the luggage, and there is

no fraudulent intention on the part of the petitioner in issuing lower denomination ticket towards passenger fare and luggage fare. He submits that the Labour Court without properly appreciating the statements of the passengers erred in confirming the order passed by the disciplinary authority, and at any rate, he contended that the punishment of removal from service imposed on the petitioner is disproportionate to the proved charges. He thus prayed that the impugned order be set aside and the petitioner be reinstated into service with full backwages.

The learned Standing Counsel for respondent No.1-APSRTC reiterating the stand taken in the counter-affidavit submitted that the petitioner committed serious cash and ticket irregularities, and the charges leveled against the petitioner were held proved by the Enquiry Officer in the departmental enquiry, and based on the enquiry report, the disciplinary authority imposed punishment of removal from service on the petitioner, which was confirmed by the Labour Court. Having regard to the nature of the proved charges, the punishment of removal from service, cannot be said to be disproportionate, warranting interference therewith by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondent No.1-APSRTC, and the learned Government Pleader for Labour.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are base on suspicion, conjectures or surmises or no reason. It is within these parameters, the award of the Labour Court has to be examined.

The petitioner, as can be seen from the award of the Labour Court, does not dispute the validity of the domestic enquiry proceedings. The petitioner was charge sheeted on two counts, namely, (1) for having collected an amount of Rs.6.50 ps., towards the requisite ticket fare from a passenger failed to issue ticket, and (2) for having collected an amount of Rs.35/- from a passenger who boarded the bus with E.10 bags of cement, issued lower denomination tickets

worth of Rs.3.50 ps., towards passenger ticket and Rs.6.50 ps., towards luggage ticket. These charges leveled against the petitioner, stood proved in the departmental enquiry. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, upon analyzing the evidence before it, and the spot explanation given by the petitioner, wherein he admitted the irregularities, disbelieved the version of the petitioner that since the bus was overloaded, by mistake he could not issue ticket to a passenger, and relying on the words of the Porter he issued lower denomination ticket towards luggage, and having found that he committed cash and ticket irregularities intentionally, held that the punishment of removal from service imposed by the disciplinary authority is proportionate to the proved charges, and I see no reason whatsoever to interfere therewith, more so when the charges leveled against the petitioner stood proved in the departmental enquiry and when the petitioner failed to point out any infirmities in the departmental enquiry.

In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[1], the apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. On the question of quantum of punishment, the apex Court held as follows:

> Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.

In the instant case, the charges leveled against the petitioner stood proved, and having regard to the gravity and seriousness of the proved charges, the 1st respondent-Depot Manager having lost confidence in the petitioner, removed him from service. In such circumstances, I am of the considered opinion that no interference is called for with the impugned award passed by the Labour Court, which upheld the punishment of removal from service imposed on the petitioner by the disciplinary authority.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 10th August, 2006.
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[1] (2005) 3 SCC 254